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ROTARY FUNDS—ESTABLISHED IN DEPARTMENT OF AGRICULTURE—“SPECIAL FUNDS” WITHIN SECTION 1, H. B. NO. 929, 101ST GENERAL ASSEMBLY—CHARGEABLE WITH COST OF EXAMINATION BY BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES.

SYLLABUS:

Rotary funds established in the Department of Agriculture are “special funds” within the meaning of Section 1 of House Bill No. 929, 101st General Assembly, and as such are chargeable with the cost of their examination made by the Bureau of Inspection and Supervision of Public Offices.

Columbus, Ohio, June 28, 1956

Hon. A. L. Sorensen, Director, Department of Agriculture  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"During the current fiscal year, the Auditor of State has made several audits of various rotary accounts within the Department of Agriculture. We have been billed recently the salary and expenses of such examinations, in which it is indicated that such expenses should be paid from our rotary accounts and placed to the credit of the rotary account in the office of the Auditor of State.

"We do not question the authority of the Auditor of State to make an examination of any of our rotary accounts but we are at a loss to know if we can legally pay the Auditor of State the personal service and expenses incurred in making such examinations.

"No law has been cited as the Auditor's authority to charge a rotary account with the expenses of auditing same. We are aware that authority is contained in House Bill No. 929 for cost of examinations to be charged against special funds but we submit that the rotary accounts of his department, which are established by law, are not a special fund but simply a rotary account.

"To our knowledge this is the first time that a charge of this nature has ever been made against these rotary accounts, although a provision contained in H. B. 929, giving authority to charge examination costs against special funds, has been in existence for years.

"Under H. B. 929, provision is made for rent to be charged against special funds by the Department of Finance and this has been done for years but no rent has ever been charged against a rotary account for the reason we are informed, that special funds have always been interpreted to mean only the 'statutory funds,' established by law, i.e., Banks and Banking, Building and Loans, etc.

"We now have on hand from the Auditor of State invoices making the following charges for the cost of examinations against the following rotaries:

- "1. Bureau of Markets, a total of \$975.11 against
  - a) Rotary F-9a created by section 901.17 of the R.C.
  - b) Rotary F-9b created by section 925.01 of the R.C.

- c) Rotary F-9c created by section 901.17 of the R.C.
- d) Rotary F-9d created by section 925.49 of the R.C.

"2. Division of Animal Industry, a total of \$627.30 against Rotary A created by section 943.04 of the R.C.

"3. Division of Foods and Dairies, a total of \$969.97 against

- a) Rotary A created by section 917.23 of the R.C.
- b) Rotary B created by section 913.23 of the R.C.
- c) Rotary C created by section 915.13 of the R.C.
- d) Rotary D created by section 911.02 of the R.C.
- e) Rotary E created by section 915.24 of the R.C.

"4. Division of Plant Industry, a total of \$2,512.71 against

- a) Rotary A created by section 907.13 of the R.C.
- b) Rotary B created by section 923.02 of the R.C.
- c) Rotary C created by section 905.27 of the R.C.
- d) Rotary D created by section 927.31 of the R.C.
- e) Rotary E created by section 905.01 of the R.C.
- f) Rotary F created by section 923.33 of the R.C.
- g) Rotary G created by section 909.15 of the R.C.

5. Division of Reclamation, a total of \$746.25 against Rotary A created by action of the Controlling Board on September 8, 1949 to facilitate the administration of sections 1513.01 to 1513.99, inclusive, of the R.C. (A copy of the letter to this department by the Controlling Board is attached hereto.)

"Rotary A in the Division of Reclamation differs from the others listed above in that none of the money in the rotary is used to support the activities of the department. It is used for the sole purpose of making refunds where an operator has not affected the amount of acreage he originally estimated he would affect in his strip mining operation.

"Are these invoices a legal charge against such rotaries?"

Other facts not referred to in your letter but disclosed by the records at the office of the State Auditor, show payment of similar inspection bills out of rotary funds in the Division of Foods, one for \$126.00 on August 25, 1955, and another for \$225.48 on November 18, 1955, as reflected by voucher No. 2199 in the Auditor's Office. These facts may be pertinent in view of some previous opinions by the Attorney General on the question.

In former years some provisions relating to the inspection of public offices were contained in Sections 2289 to 2293, General Code. But under the changes made through the processes of code revision, those sections were omitted from the Revised Code and substantial equivalents are now

to be found in various sections of the Revised Code, more particularly the current Appropriation Act of 1955, known as House Bill No. 929 and latest in point of time.

Section 117.01 Revised Code, creates in the office of the Auditor of State a bureau of inspection and supervision of public offices, with power to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution, and the offices of each taxing district or public institution in the state, and provides that the expense of such examination shall be borne by the taxing district providing such public money.

Section 117.15, Revised Code, provides that the necessary expenses of the maintenance and operation of the administrative office of the bureau of inspection and supervision of public offices shall be financed from the general revenue fund of the state through biennial appropriations by the General Assembly, but that the total amount of compensation paid state examiners, their expenses, and the cost of typing reports are to be borne by the taxing district to which such state examiners are so assigned. The section further provides :

\* \* \* "To distribute the cost of examination of each taxing district audited, the fiscal officer of such taxing district may charge each fund examined with the pro rata share of such examination costs as each fund relates in part to the total examination expense. The bureau of inspection and supervision of public offices shall furnish the fiscal officer of such taxing district, at the conclusion of each examination, a statement showing the total cost of such examination and the percentage chargeable to each fund examined. The fiscal officer may distribute such costs to each fund. The cost of typing reports shall likewise be distributed, and each fiscal officer shall be notified of the amount chargeable to the several funds individually."

Provisions contained in the current Appropriation Act specifically charge "special funds" examined with the cost of examination. The pertinent provisions of section 1, read :

"Appropriations for departments, divisions, bureaus, institutions, offices, and other agencies and bodies, for the uses and purposes of which, or of any activity or function thereof, *including the audit by the auditor of state* of the accounts and records of any such department, division, bureau, institution, office, agency, body or activity, or function, specific funds in the treasury are

provided by law, are hereby made from such specific funds in so far as such funds are subject by law to the appropriation and expenditure for the purposes herein mentioned \* \* \*.

*“The cost of examinations by state examiners of the bureau of inspection and supervision of public offices \* \* \* shall be charged against special funds by the auditor of state through the department of finance, on statements rendered monthly for services rendered during the preceding month. There is hereby appropriated from said special funds the necessary amounts to cover the cost of such examinations.”*

Briefly, the question here is whether a “rotary fund” is a “special fund” within the meaning of the Appropriation Act. A rotary, as ordinarily understood, is a revenue producing fund made up of income apart from appropriated funds. Section 6 of the Appropriation Act defines it as follows:

“The term ‘rotary’ as used in this act, and unless the context otherwise requires, includes all rotary funds established by permanent law or by action of the controlling board and also means and includes a working capital fund in whole or in part derived from a function or activity of an institution and set aside to establish or enable the department or institution to carry on such function or activity.

“Money obtained from the function or activity for which a rotary fund is provided shall be turned in to the state treasury and such moneys so turned in to the treasury between July 1, 1955 and the period covered by this act, are hereby appropriated for the purpose for which such rotary fund is now maintained, provided the director of finance shall have power to designate which moneys collected by any agency for which a rotary fund is established by this act shall be paid into such rotary fund and also to determine what obligations may be charged against and paid from such rotary fund, except as provided by permanent law. The director of finance also shall have power to require classification of all expenditures made from rotary funds. All expenditures from rotary funds for personal service shall be so classified.

\* \* \* “All moneys to the credit of existing rotary funds are hereby appropriated and all existing rotary funds except as otherwise herein provided are hereby continued in effect for the full period during which this act is effective.”

The Supreme Court has had occasion to consider the word “special” and held it to mean anything that is not general; designed for a particular purpose, occasion or person; confined to a definite field of action. Platt

v. Craig, 66 Ohio St., 75 at 78. Applying this interpretation, a rotary fund could hardly be classed as a general fund, and when not lending itself to such classification it must necessarily be treated as a "special fund" no matter by what name known or designated.

The General Assembly similarly used the terms "rotary fund" and "special fund" interchangeably, apparently intending them to have the same meaning. Thus, the rotary fund set up from moneys derived from the operation of the state fair under the provisions of Section 901.20, Revised Code, are required to be paid into the state treasury as a "special fund" to be known as the Ohio State Fair Rotary Fund. Similarly the proceeds derived from the highway use tax under the provisions of Section 5728, Revised Code, are required to be deposited in a "special fund" to be known as the Highway Use Tax Rotary Fund. Likewise, the classification of positions, offices and employments under the provisions of the Civil Service Act, Section 142.09(A) Revised Code, is conditioned upon their holders being paid by the state, or out of any "rotary fund" of any state department or state institution. Section 5503.32, Revised Code, being House Bill No. 703, enacted in 1955, also provides that all payments under policing contracts between the Turnpike Commission and the State Highway Patrol shall be made to the Treasurer of State to be credited to a *special fund* to be known as the Turnpike Policing Rotary Fund. I conclude, therefore, that all rotary funds, however created, are "special funds" as this term is used in the current General Appropriation Act.

Accordingly, in specific answer to your inquiry, it is my opinion that rotary funds established in the Department of Agriculture are "special funds" within the meaning of Section 1 of House Bill No. 929, 101st General Assembly, and as such are chargeable with the cost of their examination made by the Bureau of Inspection and Supervision of Public Offices.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General